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Attorneys for Defendant
 COSTCO WHOLESALE CORPORATION, AND
 COSTCO WHOLESALE MEMBERSHIP, INC.

ORIGINAL
 FILED

SEP 24 2007

RICHARD W. WIERING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

4JJ

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

C 07 4948

MIKE FERNANDES,
 Plaintiff,

Case No.

NOTICE OF REMOVAL

vs.

Trill Date: Not Yet Set

COSTCO WHOLESALE
 CORPORATION, COSTCO
 WHOLESALE MEMBERSHIP,
 INC., ET AL.,

Defendant.

PLEASE TAKE NOTICE that Defendants Costco Wholesale Corporation and Costco Wholesale Membership, Inc. (collectively, "Costco"), the only defendants in this action save those named as "Does 1 through 100", removed this matter from the Superior Court of the State of California in and for the County of Contra Costa under Case No. C 07-01713 (the "State Court Action") to the above Court pursuant to 28 U.S.C. § 1441 (b) and 28 U.S.C. § 1446. Removal is proper for the following reasons:

///

Dave & Christopherson, LLP
 1111 Civic Drive, Suite 380
 Walnut Creek, CA 94596

1 1. On July 23, 2007, Plaintiff Mike Fernandes ("Fernandes") filed his Complaint
2 in the State Court Action and served Costco with a copy of the Complaint on August 27,
3 2007. True and correct copies of the Summons and Complaint from the State Court
4 Action are attached hereto as Exhibits A and B respectively.

5 2. In the Complaint, Fernandes asserts a cause of action against Costco pursuant to
6 the Americans With Disabilities Act and alleges that Costco failed to meet its obligations
7 under that statute and the Americans With Disabilities Act Accessibility Guidelines. Ex.
8 A (Complaint, ¶ 9).

9 3. Accordingly, pursuant to 28 U.S.C. § 1441 (b) and 28 U.S.C. § 1331, this Court
10 has original jurisdiction over this matter because the Complaint on its face states a federal
11 question arising under the laws of the United States. Specifically, the Complaint's
12 principal claim against Costco arises under Title III of the Americans With Disabilities
13 Act, 42 U.S.C. § 12181 et seq.

14 4. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over
15 Plaintiff's remaining state law claims: violation of the Unruh Civil Rights Act (Cal. Civ
16 §§ 51-53), violation of the California Disabled Persons Act (Cal. Civ. § 54-54.8), and
17 negligence

18 5. Pursuant to 28 U.S.C. § 1446 (d), written notice of filing of this Notice of
19 Removal will be served promptly on all parties, and a copy of the Notice of Removal shall
20 be filed promptly with the Superior Court for the State of California in and for the County
21 of Contra Costa, where this action was pending prior to this removal.

22
23 **DAWE & CHRISTOPHERSON LLP**

24
25 Dated: September 24, 2007

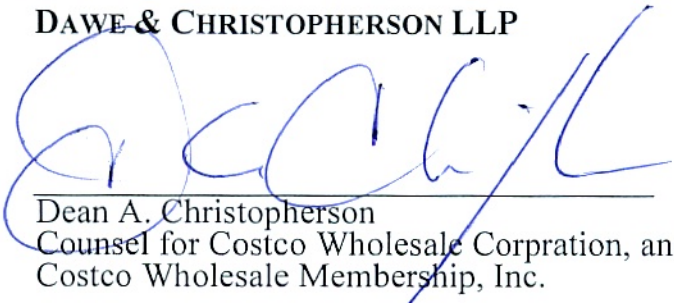
26 
27 Dean A. Christopherson
28 Counsel for Costco Wholesale Corporation, and
Costco Wholesale Membership, Inc.

EXHIBIT A

8-27 11:30

SUMMONS (CITACION JUDICIAL)

SUM-100

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

COSTCO WHOLESALE CORPORATION, A Washington Corporation;
COSTCO WHOLESALE MEMBERSHIP, INC., A California
Corporation, and DOES 1 through 100, inclusive,

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
MIKE FERNANDES

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

F I L E D

JUL 23 2007

K. TORRE CLERK OF THE COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____ Deputy Clerk

Green

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Justice Wakefield Taylor Courthouse
725 Court Street
Martinez, CA 94553

CASE NUMBER
(Número del Caso)

07-01713

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Mark D. Potter / Russell C. Handy
Center for Disability Access, LLP
100 East San Marcos Blvd Suite 400
San Marcos, CA 92069 (760)480-4162

DATE:

(Fecha)

7-23-07

CLERK OF THE
SUPERIOR COURT

Clerk, by _____

(Secretario)

G. Green

Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): Costco Wholesale Membership, Inc., a
California Corporation

- under:
- | | |
|--|---|
| <input checked="" type="checkbox"/> CCP 416.10 (corporation) | <input type="checkbox"/> CCP 416.60 (minor) |
| <input type="checkbox"/> CCP 416.20 (defunct corporation) | <input type="checkbox"/> CCP 416.70 (conservatee) |
| <input type="checkbox"/> CCP 416.40 (association or partnership) | <input type="checkbox"/> CCP 416.90 (authorized person) |
| <input type="checkbox"/> other (specify): | |

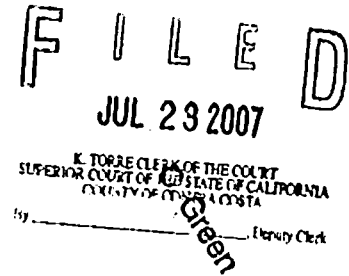
- ☒ by personal delivery on (date):

Page 1 of 1

COPY

EXHIBIT B

1 CENTER FOR DISABILITY ACCESS, LLP
 2 M. ERIC PARKAN, ESQ., SBN 35687
 3 MARK D. POTTER, ESQ., SBN 166317
 4 RUSSELL C. HANDY, ESQ., SBN 195058
 5 CHRISTIANA POYNTER, ESQ., SBN 234409
 100 East San Marcos Blvd., Suite 400
 San Marcos, CA 92069-2988
 (760) 480-4162
 Fax (760) 480-4170



6 Attorney for Plaintiff, MIKE FERNANDES

7
 8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF CONTRA COSTA

10 MIKE FERNANDES,

11 Plaintiff,

12 v.

13 COSTCO WHOLESALE
 14 CORPORATION, A Washington
 15 Corporation; COSTCO WHOLESALE
 16 MEMBERSHIP, INC., A California
 Corporation, and DOES 1 through 100,
 inclusive,

17 Defendants.

Case No.: **C 07 - 01713**

**COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF FOR
 VIOLATIONS OF: AMERICAN'S
 WITH DISABILITIES ACT; UNRUH
 CIVIL RIGHTS ACT; CALIFORNIA
 DISABLED PERSONS ACT;
 NEGLIGENCE**

DEMAND FOR JURY

PER LOCAL RULE 5 THIS
 CASE IS ASSIGNED TO
 DEPT **09**

18
 19 Plaintiff MIKE FERNANDES complains of Defendants COSTCO
 20 WHOLESALE CORPORATION, A Washington Corporation; COSTCO
 21 WHOLESALE MEMBERSHIP, INC., A California Corporation, and DOES 1 through
 22 100, inclusive, (hereinafter referred to as "Defendants") and alleges as follows:

23 **PARTIES:**

24 1. Plaintiff is a California resident with physical disabilities. He suffers from
 25 Machado Joseph Disease or SCA3 (Spinocerebellar Ataxia type 3), who requires the
 26 use of a wheelchair and a care giver.

27 2. Defendants are or were at the time of the incident the owners and operators
 28 and/or lessors and lessees of the Wholesale Membership Store located at 2201 Verne

1 Roberts Circle, Antioch, California.

2 3. Plaintiff does not know the true names of Defendants, their business
3 capacities, their ownership connection to the property and business, or their relative
4 responsibilities in causing the access violations herein complained of, and alleges a
5 joint venture and common enterprise by all such Defendants. Plaintiff is informed and
6 believes that each of the Defendants herein, including DOES 1 through 100, inclusive,
7 is responsible in some capacity for the events herein alleged, or is a necessary party for
8 obtaining appropriate relief. Plaintiff will seek leave to amend when the true names,
9 capacities, connections, and responsibilities of the Defendants and DOES 1 through
10 100, inclusive, are ascertained

11 **FACTUAL ALLEGATIONS:**

12 4. The Plaintiff has been to the Wholesale Membership Store as a patron with
13 his care giver on many occasions, most recently on February 13, 2007.

14 5. The Wholesale Membership Store is a facility open to the public, a place of
15 public accommodation, and a business establishment.

16 6. Unfortunately, the Wholesale Membership Store presented barriers to persons
17 in wheelchairs, violations of the Americans with Disabilities Act Accessibility
18 Guidelines ("ADAAG") and Title 24 of the California Code of Regulations, including,
19 but not limited to, there was a lack of properly marked and configured disabled
20 accessible parking places, with many ostensible accessible parking places lacking
21 access aisles and containing other violations.

22 7. Naturally, Plaintiff FERNANDES was frustrated, angry and/or vexed as a
23 result of encountering unlawful conditions, violations of his civil rights, and the lack of
24 safe, convenient and accessible facilities. Although these injuries are modest in scope
25 and did not result in any loss of wages or economic damage or medical care or
26 attention, the continued violation of the plaintiff's civil rights by these defendants and
27 the highly unpleasant emotional distress caused by such unlawful treatment is
28 attributable to the actions or inactions of the defendants and plaintiff seeks redress from

1 these defendants for such injury.

2 8. Plaintiff would like to return and patronize the Defendants' Wholesale
3 Membership Store but because of plaintiff's knowledge of the existence of the
4 inaccessible conditions and policies, the plaintiff is unable to use the Wholesale
5 Membership Store on a "full and equal" basis until the Wholesale Membership Store is
6 brought into compliance with the provisions of the Americans with Disabilities Act
7 Accessibility Guidelines and state accessibility law as pled herein. Plaintiff has been
8 and currently is being deterred from returning and patronizing the Defendants'
9 Wholesale Membership Store.

10 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS WITH**
11 **DISABILITIES ACT OF 1990 (On behalf of Plaintiff and Against All Defendants (42**
U.S.C. section 12101, et seq.)

12 9. The defendants are persons who either own, operate, lease or lease to a place
13 of public accommodation. As such, the Defendants are required to (1) ensure that all
14 construction, alteration, or modification is barrier free and complies with the Americans
15 with Disabilities Act Accessibility Guidelines ("ADAAG") and Title 24 of the
16 California Code of Regulations (aka "California Building Code"); and/or (2) remove all
17 existing barriers where such removal is "readily achievable." The Defendants have
18 failed to meet these obligations. The existence of readily achievable removed barriers
19 and barriers in violation of the ADAAG and/or California Building Code, including,
20 but not limited to, there was a lack of properly marked and configured disabled
21 accessible parking places, with many ostensible accessible parking places lacking
22 access aisles and containing other violations, is unlawful and has resulted in the
23 defendants' failure to provide full and equal accommodations, advantages, facilities,
24 privileges and/or services to the plaintiff.

25 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
RIGHTS ACT (On behalf of Plaintiff and Against All Defendants) (Cal Civ § 51-53)

26 10. The defendants are persons who either own, operate, lease or lease to a place
27 of public accommodation or business establishment. As such, the Defendants are
28

1 required to (1) ensure that all construction, alteration, or modification is barrier free and
 2 complies with the Americans with Disabilities Act Accessibility Guidelines
 3 ("ADAAG") and Title 24 of the California Code of Regulations (aka "California
 4 Building Code"); and (2) remove all existing barriers where such removal is "readily
 5 achievable." The Defendants have failed to meet these obligations. The Defendants
 6 intended the physical and architectural condition of their property. The existence of
 7 readily achievable removed barriers and barriers in violation of the ADAAG and/or
 8 California Building Code, including, but not limited to, there was a lack of properly
 9 marked and configured disabled accessible parking places, with many ostensible
 10 accessible parking places lacking access aisles and containing other violations, is
 11 unlawful and has resulted in the defendants' failure to provide full and equal
 12 accommodations, advantages, facilities, privileges and/or services to the plaintiff.

13 11. The acts alleged above, which form the basis of the plaintiff's discrimination
 14 claim, are intentional acts.

15 **III. THIRD CAUSE OF ACTION: VIOLATION OF THE CALIFORNIA**
 16 **DISABLED PERSONS ACT** (On behalf of Plaintiff and Against All
 Defendants) (Cal Civ § 54-54.8)

17 12. The defendants are persons who either own, operate, lease or lease to a place
 18 of public accommodation or a facility open to the public. As such, the Defendants are
 19 required to (1) ensure that all construction, alteration, or modification is barrier free and
 20 complies with the Americans with Disabilities Act Accessibility Guidelines
 21 ("ADAAG") and Title 24 of the California Code of Regulations (aka "California
 22 Building Code"); and (2) remove all existing barriers where such removal is "readily
 23 achievable." The Defendants have failed to meet these obligations. The existence of
 24 readily achievable removed barriers and barriers in violation of the ADAAG and/or
 25 California Building Code, including, but not limited to, there was a lack of properly
 26 marked and configured disabled accessible parking places, with many ostensible
 27 accessible parking places lacking access aisles and containing other violations, is
 28 unlawful and has resulted in the defendants' failure to provide full and equal

1 accommodations, advantages, facilities, privileges and/or services to the plaintiff.

2 **IV. FOURTH CAUSE OF ACTION: NEGLIGENCE (On behalf of Plaintiff and**
 3 **Against All Defendants)**

4 13. The defendants had a general duty and a duty arising under the Americans
 5 with Disabilities Act and the Unruh Civil Rights Act and California Disabled Persons
 6 Act to provide safe, convenient, and accessible facilities to the plaintiff in the running
 7 of their Wholesale Membership Store. Their breach of this duty, as alleged in the
 8 preceding paragraphs, has caused injury and damage as alleged above.

9 **PRAYER:**

10 Wherefore, Plaintiff prays that this court award damages and provide relief as
 11 follows:

12 1. For injunctive relief, compelling Defendants to comply with the Americans
 13 with Disabilities Act and the Unruh Civil Rights Act. **Note:** the plaintiff is not
 14 invoking section 55 of the California Civil Code and is not seeking injunctive relief
 15 under that section.

16 2. Damages under the Unruh Civil Rights Act and/or the California Disabled
 17 Persons Act. **Note:** A defendant cannot be held liable for damages under both the
 18 Unruh Civil Rights Act and the California Disabled Persons Act and the plaintiff will
 19 make an election at trial depending upon the evidence amassed.

20 3. Reasonable attorneys' fees, litigation expenses and costs of suit, pursuant to
 21 42 U.S.C. § 12205; Cal. Civ. Code §§ 52 and 54.3 and Cal. Civ. Proc. § 1021.5.

22 Dated: May 15, 2007

CENTER FOR DISABILITY ACCESS, LLP

23 By: 

24 MARK D. POTTER
 25 Attorneys for Plaintiff
 26
 27
 28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: May 15, 2007

CENTER FOR DISABILITY ACCESS, LLP

By: 

MARK D. POTTER
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I am a citizen of the United States, and employed in the City of Walnut Creek, County of Contra Costa. I am over the age of eighteen (18) years, and not a party to the within above-entitled action. My business address is 1111 Civic Drive, Suite 380, Walnut Creek, CA 94596. On September 24, 2007, I served the following document(s) on the party(ies) listed below:

NOTICE OF REMOVAL

(X) **(BY MAIL)** By depositing for collection and mailing, following ordinary business practices, a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid.

Mark D. Potter
Center for Disability Access, LLP
100 East San Marcos Boulevard
San Marcos, CA 92069

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on the date first written above, at Walnut Creek, California, California.



Dean A. Christopherson

Dawe & Christopherson, LLP
1111 Civic Drive, Suite 380
Walnut Creek, CA 94596